MONOPOLIES—RESTRAINT OF TRADE—REFUSAL TO SELL.—A manufacturer of an unpatented food product, which was not a necessity of life, refused to sell to a dealer who failed to maintain a certain retail price of so much a package. *Held*, such a refusal to sell is not an unreasonable restraint of trade or unlawful under the *Clayton Act* (act Oct. 15, 1914, c. 321, 38 Stat. 730). *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, 224 Fed. 566. See NOTES, p. 146.

NEGLIGENCE—IMPUTED NEGLIGENCE—AUTOMOBILE ACCIDENT—HUSBAND AND WIFE.—A woman, while riding in an automobile driven by her husband, was injured in an accident, which the contributory negligence of the husband partly caused. *Held*, the negligence of the husband is not imputed to the wife. *Knoxville Ry. & Light Co.* v. *Vangilder* (Tenn.), 178 S. W. 1117. For principles involved, see 1 VA. L. REV. 252.

PAYMENT—APPLICATION—APPLICATION BY CREDITOR TO DEBTS NOT DUE.—An insolvent bank was creditor of the defendant on a certain note not due and on other claims due and payable. The bank was also by reason of a deposit therein a debtor of the defendant. Upon winding up of the bank affairs the deposit without the consent of the defendant was applied on the unmatured note to the exclusion of the debts due. *Held*, such application is improper. *D'Yarmette* v. *Cobe* (Okla.), 151 Pac. 589. See NOTES, p. 149.

RAILROADS—DUTY OF TRAINMEN—TRESPASSERS.—The plaintiff, a boy of ten, was walking on the defendant's right of way, within the corporate limits of a city, at a place constantly used by the public as a highway. The engineer failed to see him, although he could have done so by the exercise of ordinary care, and the plaintiff was struck by the train and injured. *Held*, the defendant is liable. *Stuck* v. *Kanawha & M. Ry. Co.* (W. Va.), 86 S. E. 13.

The duty which a railroad company owes to persons trespassing on its right of way can be defined by no very definite rule. The cases seem to agree, however, that when the railroad company has reason to expect that persons will be on the right of way, then it must keep a lookout for them and use ordinary care to prevent injuring them, for it may be said that a failure to use such care would amount to wilful injury. *Hugett* v. *Erb* (Mich.), 148 N. W. 805; *Teakle* v. *San Pedro, etc., Ry. Co.*, 32 Utah 276, 90 Pac. 402, 10 L. R. A. (N. S.) 486; *Murphy* v. *Wabash Ry. Co.*, 228 Mo. 56, 128 S. W. 481; *Texas & P. Ry. Co.* v. *Harby*, 28 Tex. Civ. App. 24, 67 S. W. 541. But where the right of way is not used by the public as a highway, and the railroad company has no reason to expect trespassers there, it will not be required to keep a lookout for them, even within the corporate limits of a city. *Petur* v. *Erie Ry. Co.*, 151 App. Div. 518, 136 N. Y. Supp. 79; *Illinois Cent. R. Co.* v. *Johnson* (Ky.), 115 S. W. 798; *Toomey* v. *Southern Pac. Ry. Co.*, 86 Cal. 374, 24 Pac. 1074, 10 L. R. A. 139. And whatever may be the railroad's relative duty to adult and children trespassers after their discovery, according to the great weight of authority, the same rules apply as to keeping a lookout for them. *Southern Ry. Co.* v. *Chatman*, 124 Ga. 1026,

53 S. E. 692, 6 L. R. A. (N. S.) 283, 4 Ann. Cas. 675; *Palmer* v. *Oregon Short Line R. Co.*, 34 Utah 466, 98 Pac. 689, 16 Ann. Cas. 229. In a few states, however, it is held that a railroad company must use ordinary care to discover all trespassers, and will be liable for any injuries caused by a failure to perform this duty. *Bottoms* v. *Seaboard, etc., Ry. Co.*, 114. N. C. 699, 19 S. E. 730, 41 Am. St. Rep. 799; *Mason* v. *Southern Ry. Co.*, 58 S. C. 70, 36 S. E. 440, 53 L. R. A. 913, 79 Am. St. Rep. 826. But this doctrine, contravening as it does well settled principles as to the duty owed trespassers, seems unsound and based on no satisfactory ground. *Cleveland, etc., Ry. Co.* v. *Tartt* (C. C. A.), 99 Fed. 369, 49 L. R. A. 98. See COOLEY, TORTS, 2nd ed., 792.

RAILROADS—LICENSE—RIGHT OF WAY.—A railroad company owning a right of way of definite width sought to enjoin the erection of a brick building upon an unused part thereof by the owner of the fee. *Held*, no injunction lies. *Atlantic Coast Line Railroad* v. *Bunting* (N. C.), 84 S. E. 1009.

In spite of the frequent occurrence of the point involved, there are various holdings, that of the principal case being contrary to the weight of authority. A railroad company, after having obtained the right of way for its road, is entitled to the exclusive possession of such way. *Walsh* v. *Virginia & T. R. Co.*, 8 Nev. 110. As to adjoining owners, it stands in the common relation existing between proprietors of lands bordering on each other. *Pittsburgh, C. & St. L. Ry. Co.* v. *Jones*, 86 Ind. 496, 44 Am. Rep. 334. When its charter limits the amount of land the railroad may have in its right of way, the company is entitled to determine the amount needed. *Nashville, C. & St. L. Ry.* v. *McReynolds* (Tenn. Ch.), 48 S. W. 258. And in an action it is not necessary for the company to allege that the whole right of way is used or is essential to the use of the railroad. *Southern Railway* v. *Beaudrot*, 63 S. C. 266, 41 S. E. 299.

Though a railroad can not alienate its right of way or any part so as to interfere with full performance of the functions of the road, it may license a third person to use the right of way in any manner not incompatible with the actual use by the railroad. *Mize* v. *Rocky Mt. Bell Telephone Co.*, 38 Mont. 521, 100 Pac. 971. And without this license or permission of the company, third persons, not even the grantor, may encroach on the right of way. *New York Cent. & H. R. R. Co.* v. *City of Buffalo*, 85 Misc. Rep. 78, 147 N. Y. Supp. 209.

The decision of the principal case seems unsound, on principle. The grant to the company transferred a right of way of definite width, a part of which the servient owner now seeks to reoccupy. In order to prevent the loss of its land by prescription, the company must offer resistance to this encroachment for, if the servient owner should by adverse acts lasting through the prescriptive period obstruct the dominant owner's enjoyment, intending to deprive him of the easement, he may by prescription acquire the right to use his own land free from the easement and thus extinguish it. *Woodruff* v. *Paddock*, 130 N. Y. 618, 29 N. E. 1021. Or, if the resistance is not offered, the defendant would have a license by implication, for a license may be implied, no